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C.S. 100

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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR [C.G.]

S.A. No. 244 /2004 (S.B.)

APPELLANT DEFENDANT : Chandra Driver S/o Keturam Uraon, Aged about 50 years, Occupation- Driver, R/o Railway Banglapara, Raigarh, Tahsil & Distt. Raigarh (C.G.)

VERSUS

RESPONDENT PLAINTIFF : Surendra Pratap Shah S/o Pramod Shah, Occupation- Business, R/o Banglapara, Raigarh, Tahsil & Distt. Raigarh (C.G.)

SECOND APPEAL UNDER SECTION 100 CIVIL PROCEDURE CODE

(35)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. 244/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

15-02-2005

Shri Vinit Pandey for the appellant.

Heard on admission.

This second appeal has been preferred by the appellant/defendant against the judgment and decree dated 25-02-2004 passed by Second Additional District Judge, Raigarh confirming the judgment and decree of eviction passed by IV Civil Judge Class II, Raigarh in Civil Suit No. 33-A/2002 filed by Respondent / Plaintiff.

The plaintiff filed the above suit on the ground that he was the owner of the suit land which was given on monthly rent of Rs. 25/- to the appellant. As the appellant did not pay rent from 01-01-1994, a legal notice dated 18-05-1994 was sent to the appellant through registered post mentioning that if the payment of rent is not made by the appellant, the tenancy would be terminated and the damages @ Rs. 5/- per day would be made leviable.

Since the appellant/defendant did not pay the rent despite the above legal notice, suit for eviction and recovery of Rs. 695/- towards rent and damages was filed. It was pleaded that the plaintiff required the suit accommodation for bona fide need and that except the suit house the plaintiff had no other alternative accommodation to accommodate his large family and that the suit accommodation had become dilapidated

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. 244/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

which requires maintenance and repairs which could not be carried out without getting the same vacated. Defendant denied the tenancy. It was pleaded on behalf of the defendant that he does not recognize the plaintiff. However, issuance of quit notice was accepted by the defendant. It was further pleaded by the defendant that by profession he was driver and was residing in the House No. 229, old Ward No. 20 - New Ward No. 13 which was owned by his distantly related maternal grand mother Sonai Bai, by paying monthly rent of Rs. 60/-.

Learned Trial Court on the basis of pleadings of the respective parties framed the issue and decreed the suit holding that the suit house is situated in Railway Bangala Para, Raigarh bearing House No. 175 in Ward No. 20 which was given on rent to the defendant by plaintiff on monthly rent of Rs. 25/- from 01-05-1975 to 31-07-1994 and the defendant defaulted in paying the rent from 01-01-1994 to 31-07-1994 of Rs. 175/- and damages of Rs. 120/-. It is further held that the plaintiff does not have any other suitable accommodation except the suit house in Raigarh Town and as such he requires the same for accommodating his large family. It is also held that the suit house was in dilapidated condition which can not be repaired without getting it vacated. The trial Court has also held that the defendant has failed to prove that he was residing in the house of his distantly related maternal grand mother

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XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. 244/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

bearing house No. 229, Ward No. 13, by paying monthly rent of Rs. 60/- and accordingly the suit was decreed with cost.

Both the Courts below on the basis of documents submitted by the plaintiff being the registered sale deed dated 10-04-1974 vide Ex. P-5 executed by Parasu Ram Shah in presence of the plaintiff Surendra Pratap Shah, held that the suit property was purchased by the plaintiff and that the House Tax, Water Tax etc. of the said house were paid by the plaintiff vide Ex.P-6. On the basis of the statement of Sonai Bai who has been examined as D.W.2 both the Courts below have arrived at the conclusion that both the properties referred to by the plaintiff and defendant are one and the same and no difference is averred by the defendant in his written statement because the boundaries of both the properties are described to be the same and Sonai Bai admitted that the property which she claimed to be her property was got registered by Parasu Ram Shah in her name. Further case of the plaintiff is that the suit house was purchased by him from Parasu Ram Shah. Contention of the defendant has also been denied by his own witness Sonai Bai who has stated that the defendant did not pay rent to her. She has further admitted that a suit for ejectment and payment of rent has been decreed against her in favour of the plaintiff and that Surendra Pratap Shah used to obtain Rs. 50/-, 60/- and at times Rs. 100/- and 300/-. However, she has stated that the above payment

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मामला क्रमांक S.A. 244/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

was not towards rent but it was towards the loan. Thus considering the statement of Sonai Bai and the documents produced by the plaintiff the Courts below have recorded the concurrent finding that the defendant failed to prove that the property in which he was residing, belonged to Sonai Bai and further considering that the notice served by the plaintiff for payment of balance of rent which was not replied to by the defendant, both the Courts below held that tenant was the defendant and despite notice sent by the plaintiff for non-payment of rent the defence of the defendant was struck off. However, the finding of the trial Court that the house in question was bonafidely required by the plaintiff as he had no other alternative accommodation in Raigarh Town, has been held to be not proved by the appellate Court and decree passed on the ground of bona fide requirement has been set aside and decree on the ground that the suit house was in dilapidated condition which could not be repaired without being vacated has also been held to be disproved and accordingly the appellate Court decreed the suit on the ground of non-payment of rent.

Learned counsel for the appellant has assailed the findings of both the courts below basically on the ground that the application filed under order 41 Rule 27 of the CPC was filed by the plaintiff at the appellate stage for adducing additional evidence which has not been decided and by this application he had prayed for taking excerpts of

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. 244/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

electoral roll prepared in the year 1975 on record, in which name of Sonai Bai and her husband Narayan find place at Sl. No. 80 and 79 respectively. The findings of the both the Courts below have also been assailed on the ground that suit was instituted by a person who has no power of attorney executed by the plaintiff and substantial question of law has been proposed as under:

"whether without any power of attorney, the P.W.1 has the authority to conduct the suit?"

I have heard counsel for the appellant.

Both the Courts below have recorded a concurrent finding that vide document of Ex.P.1, Parasu Ram – P.W.1 was appointed as special power of attorney by the plaintiff who was competent to depose on his behalf.

Learned counsel for the appellant has however not shown any provision which prohibits the landlord from appointing any special power of attorney to prosecute a Civil Suit on his behalf for eviction and as such according to learned counsel no substantial question of law is involved in this case.

Finding of both the courts below is that the relationship of landlord and tenant between the plaintiff and defendant is based on document available on record and objective analysis of evidence led by both the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. 244/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

parties and that the same being concurrent finding of the fact that can not be assailed in the Second Appeal.

Statement of D.W.2 Sonai Bai who has been examined by the defendant himself has admitted that property which she claimed of her own is in fact recorded in the name of Parasu Ram Shah who has subsequently sold the same to the present plaintiff and therefore the contention of the defendant that he was tenant of Sonai Bai is disproved by his own witness Sonai Bai who has stated that defendant never paid any rent to her. On the contrary she admitted that decree of eviction was passed against her.

In the aforesaid circumstances I am of the view that the judgment and decree of the trial Court which was subsequently confirmed by the First Appellate Court is based on elaborate and objective analysis of the evidence available on record and the finding that the defendant did not pay rent to the plaintiff even after service of notice and as such the suit was decreed on the ground mentioned in section 12 (1) (a) of the Chhattisgarh Accommodation Control Act on account of default in payment of rent, does not call for any interference. More so, no substantial question of law is involved in the appeal and as such the appeal being devoid of merit is liable to be dismissed. It is accordingly dismissed.

Consequently MCP No. 624/2004 stands disposed of.

Sd/-
DHIRENDRA MISHRA
Judge

J/0

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